

Financial Institution Letters

INTERAGENCY RESPONSES TO ABIA AND ABA QUESTIONS ON THE INSURANCE SALES PRACTICES REGULATION

1. Scope of the Regulation

- a. Question: You already determined that the regulation does not apply to force placed insurance since such insurance is made by a depository institution to protect loan collateral rather than consumers. We assume that this logic would apply to other insurance products that are made by the depository institution, such as private mortgage insurance. PMI is actually owned by and in the name of the institution and thus is not sold to the consumer, even though the consumer pays for it. Therefore, we believe that PMI is not covered by the regulations. Is that correct?

Answer: It depends on the nature of the depository institution's involvement in the insurance sales transaction. Assuming that the depository institution itself purchases insurance to protect its interest in mortgage loans it has issued and merely passes the costs of the PMI on to the mortgage borrowers, then the insurance transaction would not be covered by the insurance regulation. In such an instance, the depository institution is the purchaser of the insurance and the insured party, and is simply passing on its costs for its own insurance coverage to the borrowers whose mortgage loans require PMI. This transaction is similar to that of force placed insurance. The insurance regulation preamble states that force placed insurance is not covered by the regulation. The agencies understand that PMI is currently sold in this manner. However, if the consumer has the option of purchasing the PMI and: (1) the depository institution offers the PMI to a consumer or (2) any other person offers the PMI to a consumer at an office of a depository institution or on behalf of a depository institution, then the transaction would be covered by the insurance regulation.

- b. Question: It would be our interpretation that federal crop insurance is not sold for a family, personal or household purpose but for a commercial or business purpose, thus removing such insurance sales from the scope of the regulation. Is that correct?

Answer: The insurance regulation does not apply to Federal crop insurance sold for commercial or business purposes. However, if the crop insurance is purchased primarily for family, personal or household purposes, it would be covered.

- c. Question: Regardless of when the regulation is effective, many institutions will have distributed direct mail solicitations and "take-one" applications that will be used by potential customers until after the effective date. Are solicitations and applications that are distributed prior to the effective date, but returned after the effective date, subject to the rule?

Answer: The primary reason the federal banking and thrift agencies extended the effective date from April 1 to October 1, 2001 was to allow institutions subject to the new rule to effect necessary changes to sales and solicitation documentation and advertisements. Direct mail solicitations and "take one" applications that are distributed on or after October 1, 2001 must comply with the regulation. "Take one" applications located on the premises of a depository institution or at a location controlled by the institution, such as a kiosk, that do not contain the required disclosures must be removed from circulation on or before October 1, 2001. There may be instances where a consumer may seek to purchase insurance on or after October 1, 2001 in response to a solicitation or advertisement by a depository institution that was distributed before that date and that does not contain the disclosures described in the regulation. In that situation, the depository institution would be in compliance with the regulation if the institution provides the consumer, prior to the initial sale, with the disclosures

required by the regulation. (These disclosures must be both written and oral, except that oral disclosures are not required if the consumer mails in the application.)

- d. You have indicated that renewals of insurance are not subject to the regulation.

At the outset, understand that renewals are subject to all requirements in the rule except the disclosure requirements in _____.40. The requirements in _____.30, _____.50, and _____.60 apply to renewals. As for the disclosure requirements, if the consumer received the disclosures at the initial sale, disclosures would not have to be made at the renewal. If the consumer did not receive the disclosures at the initial sale, the disclosures should be made at the first renewal after October 1, 2001 (the rule's effective date).

- (i) Question: What constitutes a "renewal" of insurance?

Answer: A "renewal" of insurance means continuation of coverage involving the same type of insurance for a consumer.

- (ii) Question: Must a renewal be issued by the same carrier?

Answer: Yes -- unless the renewal involves the same type of insurance, the new carrier is a legal successor to the original carrier, and the consumer has previously received the disclosures required by the rule at the initial sale.

- (iii) Question: Must a renewal be on the same terms and conditions, other than price and automatic changes in coverage as with an inflation index, as the original policy?

Answer: No -- provided that the renewal does not involve a different type of insurance, and the consumer has previously received the disclosures required by the rule at the initial sale.

- (iv) Question: If an existing customer is solicited to upgrade coverage and does so at a time other than when the policy is up for renewal, would that change in coverage be treated as a renewal?

Answer: The upgrade in coverage at a time when the policy is not up for renewal would be treated as a renewal, provided that the solicitation and sale of the "upgrade" does not involve a different type of insurance, and the consumer has previously received the disclosures required by the rule at the initial sale.

- e. Question: The definition of the term "covered person" or "you" states that activities "on behalf of" a bank "include" certain activities, which are then specified in the regulation. We assume that specified activities are the only activities that would trigger coverage of the regulation and that the use of the word "include" does not imply that other activities could trigger coverage. Is that correct?

Answer: No. The activities set forth in the regulation are intended to describe the circumstances under which an insurance sale or solicitation would be considered "on behalf of" the institution. The agencies consider the definition of "on behalf of" sufficient to describe the scope of coverage, yet still allow necessary flexibility to respond to industry developments.

- f. Question: In the final rule, the "on behalf of" test does not cover documents that use a

corporate name or logo. We assume this exclusion applies even if the bank and its parent holding company have a similar name. For example, consider the case in which a bank holding company is called the "Financial National Corporation," each of its subsidiary banks contains in its full name the words "Financial National Bank," and the documents used in the sale of insurance refer to "Financial National" or "Financial National Insurance Agency, Inc." In that case, we would assume that the "on behalf of" test is not triggered because the term "Financial National" is used by the parent holding company. Is that correct?

Answer: In general, yes. In response to comments, the agencies did not want to restrict the use of corporate logos or the development of corporate identities. As a result, the agencies determined to link the definition of "on behalf of" to instances where the sale or solicitation is directly relying upon the reputation and strength of the insured depository institution. Accordingly, the "on behalf of test" would be triggered if the name "Financial National Bank" appeared in the document as the seller, solicitor, advertiser or offeror of insurance as contrasted from "Financial National Insurance Company" or the use of "Financial National" as an element of a corporate logo or identity. Please note, however, that the transaction would nevertheless be covered if it occurs on the premises of a depository institution or one of the other prongs of the "on behalf of" test is met.

2. Disclosures

- a. Question: Many depository institutions do not solicit loan customers for credit insurance until after a loan application has been approved. We assume that if there is a period of time between the notification of the customer of the acceptance of the loan application and approval of the loan, then the institution will not be required to make the credit disclosures specified by the rule. Is this assumption correct?

Answer: The assumption is not correct. A covered person must make the credit disclosures if a consumer is solicited to purchase insurance while the consumer's loan application is pending. A consumer's application for credit is still "pending" for purposes of the regulation if the depository institution has approved the consumer's loan application, but not yet notified the consumer. Until the consumer is notified of the loan approval, the covered person must provide the credit disclosures if the consumer is solicited, offered or sold insurance.

- b. Question: How should disclosures be made in those cases in which an insurance sale involves a consumer's use of both the telephone and mail? For example, if a purchase begins with a telephone request for a rate quote and ends with a mailed completed application and premium payment, is an oral disclosure and acknowledgment required or would the written disclosure and acknowledgment suffice?

Answer: The regulation requires that the covered person must provide oral and written disclosures to consumers. Although the regulation provides for some exceptions for alternative sales methods, the regulation does not provide any exceptions when multiple methods are employed. That is, during telephone solicitations of insurance or annuities, the covered person must provide the applicable oral disclosures and obtain oral acknowledgement of the disclosures, regardless of whether the consumer will also receive and acknowledge written disclosures in person, through the mail, or electronically.

- c. Question: Can an institution use the short form insurance disclosures to satisfy its initial disclosure requirement to a consumer?

Answer: A depository institution may use the short-form¹ insurance disclosures only in visual media, such as television broadcasting, ATM screens, billboards, signs, posters and written advertisements and promotional materials. In other circumstances, a depository institution

must use the longer insurance disclosures required under the regulation. There is no short form for the credit disclosures.

3. Acknowledgment

- a. Question: What constitutes "reasonable efforts" to obtain a written acknowledgment in a telephone sale?

Answer: The agencies have not prescribed the steps that must be taken in order to consider the depository institutions' efforts to be "reasonable." Examples of reasonable efforts include, providing the consumer a return-addressed envelope or similar means to facilitate the consumer's return of the written acknowledgement, making a follow-up phone call or contact, sending a second mailing, or similar actions. The covered person should maintain documentation that the written disclosures and the request for written acknowledgement of those disclosures were mailed to the consumer, and should record its efforts to obtain the signed acknowledgment.

- b. Question: Does the "reasonable efforts" policy apply in the case of mail solicitations if a consumer fails to return the acknowledgment form?

Answer: No. The regulation states that the covered person "must" obtain from the consumer a written (in electronic or paper form) acknowledgment. The "reasonable efforts" exception for telephone sales does not apply to other transactions.

- c. Question: What is the appropriate form or format for a written acknowledgment that is provided electronically?

Answer: Electronic acknowledgments are not required to be in a specific format, but must be consistent with the provisions of the regulation applicable to consumer acknowledgments, i.e., the electronic acknowledgment must establish that the consumer has acknowledged receipt of the credit and/or insurance disclosures, as applicable.

- d. Question: If an insurance company provides the disclosures and obtains the acknowledgment on behalf of a depository institution, is it acceptable for the acknowledgment to be retained by the insurance company?

Answer: Yes. The depository institution is responsible for ensuring that sales made "on behalf of" the depository institution are in compliance with the rule. The insurance company may maintain documentation showing compliance with the rule, but the depository institution should have access to such records and the records should be readily available for review by examiners.

- e. Question: May the acknowledgment for the insurance disclosures be presented in a short form?

Answer: There is no prescribed form for the written acknowledgement. The regulation requires, however, that a covered person obtain the consumer's acknowledgement of receipt of the complete insurance disclosures required under ____40(a).

- f. Question: While the final regulation does not permit the credit disclosure to be given in a short form, would it be permissible for the acknowledgment of the credit disclosures to be presented in a short form?

Answer: There is no prescribed form for the written acknowledgement. The regulation requires, however, that a covered person obtain the consumer's acknowledgement of receipt of the complete credit disclosures required under ____40(b).

- g. Question: The final regulation states that a covered person must obtain the consumer's acknowledgment at the time a consumer receives disclosures or at the time of the initial purchase of an insurance product. We assume that this provision gives the covered person a choice as to when to obtain the acknowledgment. Is our reading correct?

Answer: Your reading is correct. A covered person may choose to obtain the acknowledgment from the consumer at the time a consumer receives disclosures or at the time of the initial purchase of an insurance product.

- h. Question: What constitutes an oral acknowledgment of an oral disclosure? Does this require a follow up question such as "Do you acknowledge that you received this disclosure?"

Answer: If a covered person has made the credit and insurance disclosures orally, an affirmative response to the question "Do you acknowledge that you received this disclosure," is acceptable. No specific wording is prescribed, however.

4. Compliance

- a. Question: What constitutes appropriate documentation of an oral disclosure or an oral acknowledgment?

Answer: No specific documentation requirement is prescribed in this rule, though otherwise applicable regulatory reporting standards would apply. See, e.g., 12 CFR part 562 (OTS). Appropriate documentation of an oral disclosure would clearly show that the covered person made the credit and insurance disclosures to a consumer. Similarly, appropriate documentation of an oral acknowledgment would clearly show that the consumer acknowledged receiving the credit and insurance disclosures.

For example, a tape recording of the conversation (where permitted by applicable laws) in which the covered person made the oral disclosures and received the oral acknowledgment would be acceptable. Another example would be a contemporaneous checklist completed by the covered person indicating that the covered person made the oral disclosures and received the oral acknowledgment. A contemporaneous note to the consumer's file would also be adequate. The documentation should be maintained in the customer's file so that it is accessible to examiners.

- b. Question: We assume that the requirement that a depository institution "identify" the area or areas in which insurance products are sold means that the institution determines what area or areas in the bank are appropriately separate from areas where deposits are routinely accepted and not that the depository institution must publicly mark those areas where insurance is sold. Is that assumption correct?

Answer: The regulation states that a depository institution must identify the areas where insurance sales activities occur, and clearly delineate and distinguish those areas from areas where the depository institution's retail deposit-taking activities occur. Although the Agencies did not define how depository institutions could "clearly delineate and distinguish" insurance areas, signage or other means may be used.

- c. Question: We assume that this regulation completely supercedes OCC Advisory 96-8 with

respect to all insurance and annuity sales by or on behalf of banks. Is that correct?

Answer: Portions of OCC Advisory Letter 96-8 are addressed in the regulation or the Gramm-Leach-Bliley Act (GLBA) and are no longer in effect. The sections in the Advisory Letter entitled "Applicability of State Laws" and "Customer Privacy" are both addressed in GLBA; and the sections in the Advisory Letter under "Advertising," "Sales of Insurance in Connection with Extending a Loan," and "Setting and Circumstances of Insurance Sales Activities and Specific Disclosures," are addressed in the regulation. These portions of the Advisory Letter are no longer in effect.

Other portions of the Advisory provide guidance that continues to be relevant to national banks' insurance and annuities sales. These include the sections: "Federal Prohibitions on Tying," "Management Oversight," "Evaluation and Selection of Products," "Qualifications and Training," "Inappropriate Recommendations or Sales," "Employee Compensation," "Complaints and Compliance," "Third Party Arrangements," "Annuities and Investment Product Sales" and "OCC Supervision." In the event of a conflict between the Advisory and the regulation, the regulation will prevail.

¹ References in these answers to short form insurance disclosures mean the disclosures described in section ____40(c)(5).